

AMENDED IN ASSEMBLY MAY 11, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1159

Introduced by Assembly Member V. Manuel Perez

February 27, 2009

An act to add and repeal Sections 17053.71 and 23671 amend Sections 17053.70 and 23612.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1159, as amended, V. Manuel Perez. Income and corporation tax credits: ~~sales and use taxes~~; *enterprise zones*; qualified property.

The Enterprise Zone Act provides for the designation of enterprise zones by the Trade and Commerce Agency, according to specified criteria, pursuant to which certain entities may receive regulatory, tax, and other incentives for private investment and employment.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, *including a credit in an amount equal to the sales or use tax paid or incurred during the taxable year by a taxpayer engaged in a trade or business in an enterprise zone by the taxpayer in connection with the taxpayer's purchase of specified property.*

This bill would, for taxable years beginning on or after January 1, 2009, and before January 1, 2016, ~~allow a credit in an amount equal to the sales and use tax paid or incurred for the purchase of qualified property, as defined 1, 2010, authorize a taxpayer engaged in a trade or business in enterprise zones to aggregate the value of sales and use tax credits attributable to the purchase, and placement in service, of machinery and machinery parts used for the production of renewable~~

energy resources in all of the enterprise zones in which the taxpayer is engaged in a trade or business and apply the tax credit to tax liabilities attributable to activities within one or more enterprise zones, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 California Cleantech Advantage Act of 2009.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) That the enactment of Assembly Bill 32 (Chapter 488,
6 Statutes of 2006) made California a national and global policy
7 leader in the effort to reduce greenhouse gases that pose serious
8 threats to our natural environment and to our residents' health and
9 safety.

10 (2) That the prospect of global warming is very real and may
11 already be impacting our climate and ecosystems.

12 (3) That there is an urgent need to develop, market, and use
13 products, equipment, and services that reduce the formation of
14 greenhouse gases.

15 (b) The Legislature further finds and declares:

16 (1) That the level of national and global concern over greenhouse
17 gas emissions has begun to focus American technological research
18 and investment on developing industrial and consumer products
19 and processes that produce zero or ultra-low emissions of carbon
20 dioxide, the primary greenhouse gas.

21 (2) It is in the best interest of this state to expeditiously foster
22 a competitive cleantech industry in California by offering investors
23 financial incentives to spur cleantech research and development,
24 production, and utilization of environmentally clean products.

25 (3) That Cleantech Venture reached eight billion four hundred
26 million dollars (\$8,400,000,000) in 2008.

27 (4) That growing cleantech investment will help create as many
28 as 114,000 new, high-paying, skilled jobs, improve the state's air
29 and water quality, and offer businesses reliable and affordable
30 sources of alternative energy.

1 (c) Therefore, it is the intent of the Legislature to enact and
2 enhance targeted tax credits to increase investment in cleantech
3 activities and renewable energy, as well as maintain and enhance
4 this state's competitive lead in attracting investment capital, clean
5 industry, and high-paying, skilled jobs.

6 ~~SEC. 3. Section 17053.71 is added to the Revenue and Taxation~~
7 ~~Code, to read:~~

8 ~~17053.71. (a) For each taxable year beginning on or after~~
9 ~~January 1, 2009, and before January 1, 2016, there shall be allowed~~
10 ~~as a credit against the "net tax," as defined by Section 17039, an~~
11 ~~amount equal to the sales and use tax paid or incurred during the~~
12 ~~taxable year by the taxpayer for the taxpayer's purchase of qualified~~
13 ~~property.~~

14 ~~(b) For purposes of this section, "qualified property" means any~~
15 ~~property used in an enterprise zone, targeted tax area, or a local~~
16 ~~military base realignment area for the production or generation of~~
17 ~~renewable energy.~~

18 ~~(c) In the case where the credit allowed by this section exceeds~~
19 ~~the "net tax," the excess may be carried over to reduce the "net~~
20 ~~tax" in the following year, and the four succeeding years if~~
21 ~~necessary, until the credit is exhausted.~~

22 ~~(d) This section shall remain in effect only until December 1,~~
23 ~~2016, and as of that date is repealed.~~

24 ~~SEC. 4. Section 23671 is added to the Revenue and Taxation~~
25 ~~Code, to read:~~

26 ~~23671. (a) For each taxable year beginning on or after January~~
27 ~~1, 2009, and before January 1, 2016, there shall be allowed as a~~
28 ~~credit against the "tax," as defined by Section 23036, an amount~~
29 ~~equal to the sales and use tax paid or incurred during the taxable~~
30 ~~year by the taxpayer for the taxpayer's purchase of qualified~~
31 ~~property.~~

32 ~~(b) For purposes of this section, "qualified property" means any~~
33 ~~property used in an enterprise zone, targeted tax area, or a local~~
34 ~~military base realignment area for the production or generation of~~
35 ~~renewable energy.~~

36 ~~(c) In the case where the credit allowed by this section exceeds~~
37 ~~the "tax," the excess may be carried over to reduce the "tax" in~~
38 ~~the following year, and the four succeeding years if necessary,~~
39 ~~until the credit is exhausted.~~

~~(d) This section shall remain in effect only until December 1, 2016, and as of that date is repealed.~~

SEC. 3. Section 17053.70 of the Revenue and Taxation Code is amended to read:

17053.70. (a) There shall be allowed as a credit against the “net tax” (as defined in Section 17039) for the taxable year an amount equal to the sales *tax reimbursement* or use tax paid or incurred during the taxable year by the taxpayer in connection with the taxpayer’s purchase of qualified property.

(b) For purposes of this section:

(1) “Taxpayer” means a person or entity engaged in a trade or business within an enterprise zone.

(2) “Qualified property” means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(iv) Data processing and communications equipment, including, but not limited, to computers, computer-automated drafting systems, copy machines, telephone systems, and faxes.

(v) Motion picture manufacturing equipment central to production and postproduction, including, but not limited to, cameras, audio recorders, and digital image and sound processing equipment.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed one million dollars (\$1,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

1 (3) “Enterprise zone” means the area designated as an enterprise
2 zone pursuant to Chapter 12.8 (commencing with Section 7070)
3 of Division 7 of Title 1 of the Government Code.

4 (c) If the taxpayer has purchased property upon which a use tax
5 has been paid or incurred, the credit provided by this section shall
6 be allowed only if qualified property of a comparable quality and
7 price is not timely available for purchase in this state.

8 (d) In the case where the credit otherwise allowed under this
9 section exceeds the “net tax” for the taxable year, that portion of
10 the credit that exceeds the “net tax” may be carried over and added
11 to the credit, if any, in succeeding taxable years, until the credit is
12 exhausted. The credit shall be applied first to the earliest taxable
13 years possible.

14 (e) Any taxpayer who elects to be subject to this section shall
15 not be entitled to increase the basis of the qualified property as
16 otherwise required by Section 164(a) of the Internal Revenue Code
17 with respect to sales or use tax paid or incurred in connection with
18 the taxpayer’s purchase of qualified property.

19 (f) (1) ~~The~~ *Except as provided in subdivision (g), the* amount
20 of the credit otherwise allowed ~~under~~ *by* this section and Section
21 17053.74, including any credit carryover from prior years, that
22 may reduce the “net tax” for the taxable year shall not exceed the
23 amount of tax that would be imposed on the taxpayer’s business
24 income attributable to the enterprise zone determined as if that
25 attributable income represented all of the income of the taxpayer
26 subject to tax under this part.

27 (2) Attributable income shall be that portion of the taxpayer’s
28 California source business income that is apportioned to the
29 enterprise zone. For that purpose, the taxpayer’s business income
30 attributable to sources in this state first shall be determined in
31 accordance with Chapter 17 (commencing with Section 25101) of
32 Part 11. That business income shall be further apportioned to the
33 enterprise zone in accordance with Article 2 (commencing with
34 Section 25120) of Chapter 17 of Part 11, modified for purposes
35 of this section in accordance with paragraph (3).

36 (3) Business income shall be apportioned to the enterprise zone
37 by multiplying the total California business income of the taxpayer
38 by a fraction, the numerator of which is the property factor plus
39 the payroll factor, and the denominator of which is two. For
40 purposes of this paragraph:

1 (A) The property factor is a fraction, the numerator of which is
2 the average value of the taxpayer's real and tangible personal
3 property owned or rented and used in the enterprise zone during
4 the taxable year, and the denominator of which is the average value
5 of all the taxpayer's real and tangible personal property owned or
6 rented and used in this state during the taxable year.

7 (B) The payroll factor is a fraction, the numerator of which is
8 the total amount paid by the taxpayer in the enterprise zone during
9 the taxable year for compensation, and the denominator of which
10 is the total compensation paid by the taxpayer in this state during
11 the taxable year.

12 (4) The portion of any credit remaining, if any, after application
13 of this subdivision, shall be carried over to succeeding taxable
14 years, as if it were an amount exceeding the "net tax" for the
15 taxable year, as provided in subdivision (d).

16 *(g) (1) Notwithstanding the limitations established in*
17 *subdivisions (d) and (f), the amount of the credit otherwise allowed*
18 *by this section for machinery and machinery parts used for the*
19 *production of renewable energy resources pursuant to clause (ii)*
20 *of subparagraph (A) of paragraph (2) of subdivision (b), including*
21 *any credit carryover from prior years, and the credit otherwise*
22 *allowed by Section 17053.74 for employing qualified employees,*
23 *including any credit carryover from prior years, that may reduce*
24 *the "net tax" for the taxable year shall not exceed the amount of*
25 *tax that would be imposed on the taxpayer's business income*
26 *attributable to all of the enterprise zones in which the taxpayer is*
27 *engaged in a trade or business, determined as if that attributable*
28 *income represented all of the income of the taxpayer subject to*
29 *tax under this part.*

30 *(2) Attributable income shall be that portion of the taxpayer's*
31 *California source business income that is apportioned to all of the*
32 *enterprise zones in which the taxpayer is engaged in a trade or*
33 *business. For that purpose, the taxpayer's business income*
34 *attributable to sources in this state first shall be determined in*
35 *accordance with Chapter 17 (commencing with Section 25101) of*
36 *Part 11. That business income shall be further apportioned to the*
37 *enterprise zones in accordance with Article 2 (commencing with*
38 *Section 25120) of Chapter 17 of Part 11, modified for purposes*
39 *of this section in accordance with paragraph (3).*

1 (3) *Business income shall be apportioned to all of the enterprise*
2 *zones in which the taxpayer is engaged in a trade or business by*
3 *multiplying the total California business income of the taxpayer*
4 *by a fraction, the numerator of which is the property factor plus*
5 *the payroll factor; and the denominator of which is two. For*
6 *purposes of this paragraph:*

7 (A) *The property factor is a fraction, the numerator of which is*
8 *the average value of the taxpayer's real and tangible personal*
9 *property owned or rented and used in all of the enterprise zones*
10 *in which the taxpayer is engaged in a trade or business during the*
11 *taxable year, and the denominator of which is the average value*
12 *of all the taxpayer's real and tangible personal property owned*
13 *or rented and used in this state during the taxable year.*

14 (B) *The payroll factor is a fraction, the numerator of which is*
15 *the total amount paid by the taxpayer in all of the enterprise zones*
16 *in which the taxpayer is engaged in a trade or business during the*
17 *taxable year for compensation, and the denominator of which is*
18 *the total compensation paid by the taxpayer in this state during*
19 *the taxable year.*

20 (4) *The portion of any credit remaining, if any, after application*
21 *of this subdivision, shall be carried over to succeeding taxable*
22 *years, as if it were an amount exceeding the "net tax" for the*
23 *taxable year, as provided in subdivision (d).*

24 ~~(g)~~

25 (h) *The amendments made to this section by the act adding this*
26 *subdivision Chapter 323 of the Statutes of 1998 shall apply to*
27 *taxable years beginning on or after January 1, 1998.*

28 (i) *The amendments made to this section by the act adding this*
29 *subdivision shall apply to taxable years beginning on or after*
30 *January 1, 2010.*

31 SEC. 4. *Section 23612.2 of the Revenue and Taxation Code is*
32 *amended to read:*

33 23612.2. (a) *There shall be allowed as a credit against the*
34 *"tax" (as defined by Section 23036) for the taxable year an amount*
35 *equal to the sales tax reimbursement or use tax paid or incurred*
36 *during the taxable year by the taxpayer in connection with the*
37 *taxpayer's purchase of qualified property.*

38 (b) *For purposes of this section:*

39 (1) *"Taxpayer" means a corporation engaged in a trade or*
40 *business within an enterprise zone.*

1 (2) “Qualified property” means:

2 (A) Any of the following:

3 (i) Machinery and machinery parts used for fabricating,
4 processing, assembling, and manufacturing.

5 (ii) Machinery and machinery parts used for the production of
6 renewable energy resources.

7 (iii) Machinery and machinery parts used for either of the
8 following:

9 (I) Air pollution control mechanisms.

10 (II) Water pollution control mechanisms.

11 (iv) Data-processing and communications equipment, including,
12 but not limited to, computers, computer-automated drafting
13 systems, copy machines, telephone systems, and faxes.

14 (v) Motion picture manufacturing equipment central to
15 production and postproduction, including, but not limited to,
16 cameras, audio recorders, and digital image and sound processing
17 equipment.

18 (B) The total cost of qualified property purchased and placed
19 in service in any taxable year that may be taken into account by
20 any taxpayer for purposes of claiming this credit shall not exceed
21 twenty million dollars (\$20,000,000).

22 (C) The qualified property is used by the taxpayer exclusively
23 in an enterprise zone.

24 (D) The qualified property is purchased and placed in service
25 before the date the enterprise zone designation expires, is no longer
26 binding, or becomes inoperative.

27 (3) “Enterprise zone” means the area designated as an enterprise
28 zone pursuant to Chapter 12.8 (commencing with Section 7070)
29 of Division 7 of Title 1 of the Government Code.

30 (c) If the taxpayer has purchased property upon which a use tax
31 has been paid or incurred, the credit provided by this section shall
32 be allowed only if qualified property of a comparable quality and
33 price is not timely available for purchase in this state.

34 (d) In the case where the credit otherwise allowed under this
35 section exceeds the “tax” for the taxable year, that portion of the
36 credit which exceeds the “tax” may be carried over and added to
37 the credit, if any, in the following year, and succeeding years if
38 necessary, until the credit is exhausted. The credit shall be applied
39 first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) ~~The~~ *Except as provided in subdivision (g), the amount of credit otherwise allowed—under by this section and Section 23622.7, including any credit carryover from prior years, that may reduce the “tax” for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.*

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable

1 years, as if it were an amount exceeding the “tax” for the taxable
2 year, as provided in subdivision (d).

3 *(g) (1) Notwithstanding the limitations established in*
4 *subdivisions (d) and (f), the amount of the credit otherwise allowed*
5 *by this section for machinery and machinery parts used for the*
6 *production of renewable energy resources, pursuant to clause (ii)*
7 *of subparagraph (A) of paragraph (2) of subdivision (b), including*
8 *any credit carryover from prior years, and the credit otherwise*
9 *allowed by Section 23622.7 for employing qualified employees,*
10 *including any credit carryover from prior years, that may reduce*
11 *the “tax” for the taxable year shall not exceed the amount of tax*
12 *that would be imposed on the taxpayer’s business income*
13 *attributable to all of the enterprise zones in which the taxpayer is*
14 *engaged in a trade or business, determined as if that attributable*
15 *income represented all of the income of the taxpayer subject to*
16 *tax under this part.*

17 *(2) Attributable income shall be that portion of the taxpayer’s*
18 *California source business income that is apportioned to all of the*
19 *enterprise zones in which the taxpayer is engaged in a trade or*
20 *business. For that purpose, the taxpayer’s business income*
21 *attributable to sources in this state first shall be determined in*
22 *accordance with Chapter 17 (commencing with Section 25101) of*
23 *Part 11. That business income shall be further apportioned to the*
24 *enterprise zones in accordance with Article 2 (commencing with*
25 *Section 25120) of Chapter 17 of Part 11, modified for purposes*
26 *of this section in accordance with paragraph (3).*

27 *(3) Business income shall be apportioned to all of the enterprise*
28 *zones in which the taxpayer is engaged in a trade or business by*
29 *multiplying the total California business income of the taxpayer*
30 *by a fraction, the numerator of which is the property factor plus*
31 *the payroll factor, and the denominator of which is two. For*
32 *purposes of this paragraph:*

33 *(A) The property factor is a fraction, the numerator of which is*
34 *the average value of the taxpayer’s real and tangible personal*
35 *property owned or rented and used in all of the enterprise zones*
36 *in which the taxpayer is engaged in a trade or business during the*
37 *taxable year, and the denominator of which is the average value*
38 *of all the taxpayer’s real and tangible personal property owned*
39 *or rented and used in this state during the taxable year.*

1 (B) *The payroll factor is a fraction, the numerator of which is*
2 *the total amount paid by the taxpayer in all of the enterprise zones*
3 *in which the taxpayer is engaged in a trade or business during the*
4 *taxable year for compensation, and the denominator of which is*
5 *the total compensation paid by the taxpayer in this state during*
6 *the taxable year.*

7 (4) *The portion of any credit remaining, if any, after application*
8 *of this subdivision, shall be carried over to succeeding taxable*
9 *years, as if it were an amount exceeding the “tax” for the taxable*
10 *year, as provided in subdivision (d).*

11 ~~(g)~~

12 (h) *The amendments made to this section by the act adding this*
13 *subdivision Chapter 323 of the Statutes of 1998 shall apply to*
14 *taxable years beginning on or after January 1, 1998.*

15 (i) *The amendments made to this section by the act adding this*
16 *subdivision shall apply to taxable years beginning on or after*
17 *January 1, 2010.*

18 SEC. 5. This act provides for a tax levy within the meaning of
19 Article IV of the Constitution and shall go into immediate effect.